ulation to attempt to 'differentiate between the extent of the injury he did receive and that which he would probably have received if he had not come in contact with the electric wire in the course of his fall. It is quite possible the wire helped break the fall, and thus lessen the extent of the injury,' but that, in any event, the presence of the wire did not bring about the accident. Whatever view is taken of the correctness of this decision (Birsch *v.* Elec. Co., 36 Mont. loc. cit. 582, 93 Pac. 940), the facts distinguish it. In no event does it unsettle the principle of the cases previously cited. In the circumstances it cannot be said this nine year old boy is barred of redress by the facts shown by this record. The boy's presence in the tree did not constitute contributory negligence. There was no direct evidence he knew of the defect of insulation. There was no evidence he purposely touched the wires. The uncontradicted evidence shows he did not."

Workmen's Compensation Act—Assault by Employee as Injury "Arising Out of" Employment.—In Jacquemin *v.* Turner & Seymour Mfg. Co., in the Supreme Court of Errors of Connecticut (March, 1918, 103 Atl. 115), it appeared that a company manufacturing iron castings, not desiring too many casters around the cupola where the molten metal was drawn out, or that the casters should get through their work too early before leaving for the day, supplied them with a limited number of ladles, and in the course of their employment two of the casters quarreled over the possession of a ladle, which each wanted to use in order to pour his moulds and get away. The one who began the quarrel and fight resulting in the death of the other asserted a right to a ladle which he did not have, and when the decedent had full opportunity to have desisted from the fight he chose to renew it, and thereafter was injured. It did not appear that the conditions under which the business was conducted had ever before occasioned similar trouble. It was held that the injury did not arise out of decedent's employment. The opinion concludes:

"The finding does not disclose that the conditions under which this business was conducted had ever before occasioned a similar trouble, or that either of the men was quarrelsome. There was nothing to put the employer on notice. It was the duty of the employees to do their work under the established conditions. O'Shaugnessy asserted a right over Jacquemin's ladle which he did not have. He began the quarrel and fight. These were purely personal. They had no relation to the special conditions of the business so far as the finding shows. And when Jacquemin had full opportunity to have desisted from the fight he chose to renew it, and thereafter received his injury. The fight occurred in the course of the employment, but it did not originate in it or arise as a consequence or incident of it. These men turned temporarily from their work to engage in their

own quarrel. Nothing their employer required of them would necessarily provoke them to a quarrel, nor could this have been reasonably anticipated. The fact that employees sometimes quarrel and fight while at work does not make the injury which may result one which arises out of their employment. There must be some reasonable connection between the injury suffered and the employment or the conditions under which it is pursued.

"The case at bar resembles closely Union Sanitary Mfg. Co. *v.* Davis (Ind. App. 115 N. E. 676), where a moulder was injured as a result of a quarrel with a fellow employee over the repair of a ladle, and his duty did not include such repairing. It was held that the injury did not arise out of the employment.

"The commissioner relied for his authority upon Heitz *v.* Ruppert (218 N. Y. 148, 112 N. E. 750, L. R. A. 1917A, 344). That case may, perhaps, be distinguishable from this because Heitz, unlike Jacquemin, was passive, and he was injured while actually at his work. Whether we should upon the same facts reach a like conclusion need not now be determined. Certainly the case bears some resemblance to the cases of skylarking or horseplay. Garth slapped Heitz on the shoulder, and as he turned Garth's finger struck in Heitz's eye. It is not easy to see how the slapping of Heitz can be said to be an incident of the employment any more than any other form of horseplay."

Workmen's Compensation—Horseplay and Practical Jokes as "Within Scope of Employment."—In State ex rel. H. S. Johnson Sash & Door Co. *v.* District Court, Hennepin County, in the Supreme Court of Minnesota, 167 N. W. 283, it appeared that "an employee working in the relator's factory was hit and injured by a missile thrown by a fellow worker. The court found that it was customary for some of the workmen to throw at one another and at others; that the relator knew of the custom or should have known of it in the exercise of diligence; that the injured employee was at the time engaged in his work, and that he did not then and had not at any time engaged with his fellow worker in sport of such kind. There was evidence that the employee had never engaged with any of the employees in such sport, and that he had complained to the relator of the acts of his coworkers. It was held that the ultimate finding that the injury arose out of the employment within the meaning of the Workmen's Compensation Act is sustained." (Syllabus by the court.) The court said in part:

"The rule is well enough settled that where workmen step aside from their employment and engage in horseplay or practical joking, or so engage while continuing their work, and accidental injury results, and in general where one in sport or mischief does some act resulting in injury to a fellow worker, the injury is not